

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/823,484	Applicant(s) CONNELLY, JAY H.
Examiner MUSHFIKH ALAM	Art Unit 2426

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-11 and 25-36.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Joseph P. Hirli/
 Supervisory Patent Examiner, Art Unit 2426
 October 30, 2009

Continuation of 11, does NOT place the application in condition for allowance because:

Claim 1, Applicant argues that Brunheroto fails to teach that such web server 106 broadcasts a multi-media data file that is scheduled for broadcast by TV broadcast station 112 as part of a predetermined network broadcast schedule, as in Claim 1. Rather than broadcast a multi-media data file selected from the plurality of upcoming multi-media data files prior to the upcoming scheduled broadcast, by a broadcast server of a broadcast service system as part of the predetermined network broadcast schedule, as in Claim 1, the web server referred to by the Examiner does not broadcast multi-media content. In contrast with Claim 1, the web server of Brunheroto is used to track audience viewing of the interactive content provided to the broadcast station for broadcast via broadcast network 113, which is shown as block 305 in FIG. 3, with tracking server 307 corresponding to web server 106 as shown in FIG. 1. (See page 5, [0074]). In response to Applicant's argument, Brunheroto is relied upon for teaching "a broadcast server of a broadcast service system that is separate from a service provider system". This feature is combined with Seidman's technique for broadcasting upcoming multimedia files. One of ordinary skill in the art would combine the two references in order to produce how many people are enjoying enhanced programming and disclosed in the Office Action. This allows for the combination to utilize a system that may have "a broadcast server" to be separate from a "service provider system".

Applicant further argues that according to Hite, such pre-stored commercials are used for situations where time synchronization of several channels of alternate commercials is not possible without causing conflicts with normally scheduled preemptable commercials. (See col. 12, lines 21-25.) Hence, although such commercial is broadcast prior to a commercial spot, we submit that such pre-stored commercials are not selected from a plurality of upcoming multi-media data files that are scheduled for an upcoming broadcast as part of a predetermined network broadcast schedule. It is improper for the Examiner to rely on Hite since it cannot be said that a pre-stored commercial of Hite is broadcast prior to the upcoming scheduled broadcast of the pre-stored commercial, by the broadcast server of the broadcast service system as part of the predetermined network broadcast schedule, since such additional broadcast of the pre-stored commercials would be a waste of broadcast bandwidth.

The Examiner respectfully disagrees. The claims are read in the broadest sense. Hite discloses a feature that allows the use of pre-stored commercials to be played back in certain situations. Since the commercials are pre-stored, they must be broadcast before an upcoming broadcast and subsequently "pre-stored". One scenario is when time synchronization of several channels is causing conflicts. These pre-stored commercials are known to be substituted in the pre-determined commercials locations. The effect of the time synchronization does not have an effect of the storing of the pre-stored commercials, these commercials are still stored. Thus, these commercials are part of the pre-determined network broadcast schedule. The "predetermined network broadcast schedule" may be interpreted as broadly as just a schedule with programming slots and commercial slots.

Further, since they pre-stored commercials are stored at the client there is no need for them to be rebroadcast, which will not result in a waste of broadcast bandwidth.

Applicant further argues that Hite fails to teach that a pre-stored commercial would be broadcast prior to the upcoming scheduled broadcast of a selected multi-media data file by the broadcast server of the broadcast service system as part of the predetermined network broadcast schedule, as in Claim 1, since any subsequent broadcast would be a waste of broadcast bandwidth since pre-stored commercials are already contained on a user's set top box. Therefore, Hite teaches that pre-stored commercials are provided to replace scheduled broadcasts of the targeted commercials according to a broadcast schedule. The pre-stored commercials of Hite cannot become part of a predetermined network broadcast schedule, as suggested by the Examiner, because these replacement commercials in fact alter the predetermined broadcast schedule.

The Examiner respectfully disagrees. These pre-stored commercials are known to be substituted in the pre-determined commercials locations. Thus, these commercials are part of the pre-determined network broadcast schedule. The "predetermined network broadcast schedule" may be interpreted as broadly as just a schedule with programming slots and commercial slots.

Further, since they pre-stored commercials are stored at the client there is no need for them to be rebroadcast, which will not result in a waste of broadcast bandwidth.

Applicant further argues the Examiner fails to recognize that the at least one multi-media data file that is selected from the plurality of upcoming multi-media data files is broadcast for selective storage within the one or more client systems, according to respective content rating tables of the one or more client systems. It is improper for the Examiner to rely on Hite since it cannot be said that the content rating tables of Claim 1 would refer to commercials nor would one skilled in the art understand that the broadcasting of upcoming multi-media data files for selective storage within one or more client systems prior to the upcoming scheduled broadcast of the selected multi-media data file would include a commercial as in Hite. Hence, the broadcast of a selected multi-media data file for selective storage within one or more client systems prior to the upcoming scheduled broadcast of the selected multi-media data file would not apply to a commercial spot as suggested by the Examiner since it is indicated by user sentiment against the display of commercial spots a user would most likely not be inclined to rate commercial spots or desire the selective storage of such commercial spots within a client system. We submit that since the consumers of broadcast service systems are generally adverse to spending time watching commercial spots, one of skill in the art would not be motivated to modify Seidman in view of Brunheroto to teach or suggest the broadcast of a selected multi-media data file for selective storage within one or more client systems prior to the upcoming scheduled broadcast of the selected multi-media data file, by the broadcast server of a broadcast service system, is part of the predetermined broadcast schedule, as in Claim 1.

The Examiner respectfully disagrees. The advertisements of Hite are targeted advertisements. Thus, this means they are rated (i.e. stored in the Targeted Consumer Database). Determining suitable commercials to pre-store is done according to the ratings (analysis). This, Hite may be relied upon to teach "...at least one of the plurality of upcoming data files for selective storage within the one or more client system according to content rating tables of the one or more client system prior to the scheduled broadcast...".

Claims 25-26, 34, 36 are analyzed similarly to the above arguments.

Claims 6-8, 28-28, 35 are analyzed similarly to the above arguments..